

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 215 of 2000****For Approval and Signature:****HONOURABLE MR.JUSTICE A.M.KAPADIA****HONOURABLE MR.JUSTICE K.A.PUJ**

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

=====

LALJIBHAI KANJIBHAI MAKVANA - Appellant(s)**Versus****STATE OF GUJARAT - Opponent(s)**

=====

Appearance :

MS RV ACHARYA, appointed by Legal Aid Committee for Appellant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA**and****HONOURABLE MR.JUSTICE K.A.PUJ****Date : 30/11/2006****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)**

1. The appellant ('accused' for short) was tried by the learned Additional Sessions Judge, Rajkot District, Rajkot in Special NDPS Case No. 105 of 1999 for commission of the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short), arraigned on charge of having been found with contraband article 'brown sugar' contained in 12 pouches weight of which was 300 milligrams, without pass or permit when he was intercepted and apprehended at Ramnathpara Main Road, near Ramnath Hotel, Rajkot, on 10.4.1999, on the basis of the prior information received by P.W.1, Bakulbhai Vithalbhai Jani, PSI, DCB, Rajkot. At the end of the trial, the accused was found guilty of the offence with which he was charged and as his complicity is proved, the learned Judge of the trial court convicted him vide judgment and order dated 20.1.2000 for commission of the offence punishable under Section 21 of the NDPS Act and sentenced him to suffer RI for ten years and fine of Rs. 1 lakh

i.d., SI for further period of six months. Aggrieved by the aforesaid order of conviction and sentence, the accused has filed this appeal under Section 374 of the Code of Criminal Procedure ('the Code' for short).

2. Briefly stated the prosecution case as disclosed from the FIR and unfolded during trial is as follows:

2.1. P.W.1, Bakulbhai Vithalbhai Jani, PSI, DCB Police station, Rajkot, received a secret information from his informant on 10.4.1999 at about 6.30 P.M. that a person, named Lalji Kanji Makwana, having white dress was selling brown sugar at Ramnathpara Main Road, near Ramnath Hotel, Rajkot. The said secret information was noted down in the register kept for that purpose and was also conveyed to the police control room, Rajkot. The said information was also communicated to the Deputy Police Commissioner, Rajkot. A message was sent to Scientific Officer

to accompany him for the raid. Two panchas were called at the Crime Investigation Branch, Rajkot. The Panchas were briefed about the secret information received by P.W.1, Bakulbhai Jani and were requested to have a search of all the members of the raiding party. Thereafter P.W.1, Bakulbhai Jani with his staff, two panchas and Ajitbhai Laljibhai Gameti, Scientific Officer commenced the process for raid with seal and sealing materials. The police control room was informed about the departure of the raiding party for raid. The raiding party reached at Ramnathpara Main Road, Rajkot. The jeep in which the raiding party travelled upto that place was kept at some distance. P.W.1, Bakulbhai Jani and other staff members rushed towards Ramnath Hotel. There they found one person in white dress. He was interrogated. His name was disclosed Lalji Kanji Koli. P.W.1, Bakulbhai Jani gave his introduction and briefed him about the information received by him. The accused was asked whether he would like to be searched in

presence of any gazetted officer or Magistrate. The accused did not prefer to be searched in presence of any gazetted officer or magistrate. P.W.1, Bakulbhai Jani, as volunteered by the accused, searched the person of the accused in presence of panchas. One match box was found from the pocket of the shirt put on by the accused. The match box was opened in presence of panchas and 12 small packets having gum tape were found. The small packets were opened in presence of panchas and brown coloured powder was found in each packet. Ajitbhai Laljibhai Gameti, scientific Officer from FSL, was requested to examined the powder. On examination, prima facie, it was found to be brown sugar. A police constable was deputed to call a responsible person to weigh the powder and the police constable called P.W.8, Gopalbhai Kantilal Parmar, Ex.24, who was a gold-smith. He came with the weighing scale. He weighed the powder and declared that the material recovered from the accused was weighing 300 milligram. The powder

was packed in white paper. The while packet was wrapped by brown paper and thereafter it was sealed having slip signed by two panchas. The seal having monogram of Police Commissioner, Rajkot, was affixed. The accused was given seizure memo. His wife was informed about the arrest. The accused was arrested on the spot. P.W.1, Bakulbhai Jani lodged complaint against the accused with DCB Rajkot Police Station which was registered by P.W.9, Trijukinarayan Jamnaprasad Mishra, Ex.26, as per the narration of P.W.1, Bakulbhai Jani and the muddamal was handed over to Writer Police Constable for the purpose of sending it to FSL, Junagadh. Thereafter investigation was carried out by P.W.12, Kedarnath Ramlal Avadhvasi, Ex.51, who, on taking over the investigation, forwarded the muddamal to FSL, Junagadh. P.W.12, Kedarnath Avadhvasi, I.O., recorded the statements of the witnesses. On receipt of the report from FSL certifying that the muddamal seized was extract from opium having purified known as diacetyl

morphine and since sufficient incriminating evidence was found against the accused, he was charge-sheeted before the Sessions Court, Rajkot for commission of the offence punishable under Section 21 of the NDPS Act.

2.2. The learned Additional Sessions Judge, Rajkot District, Rajkot to whom the case was made over for trial, framed charge against the accused for commission of the offences punishable under Sections 21 of the NDPS Act which was read over and explained to him. As the accused pleaded not guilty to the charge and claimed to be tried, he was put to trial and tried in Special NDPS Case No. 105 of 1999.

2.3. To prove the culpability of the accused, the prosecution has examined and relied upon the evidence of 12 witnesses, the details of which are given in para 4 of the impugned judgment and order. They are as under:

PW No.	Particulars	Ex. No.	Page No.
1.	Bakulbhai Vithalbhai Jani (complainant)	5	22
2.	Ishwargiri Hemantgiri Gosai (Panch witness)	9	34
3.	Govindbhai Amarshibhai (Panch witness)	10	36
4.	Ganpatprasad Banarasiprasad	12	42
5.	Pravinchandra Chandulal Vyas	16	49
6.	Mahendra Dhanbahadur Pun	17	51
7.	Jamnadas Mohanlal Vadgama	19	53
8.	Gopalbhai Kantilal Parmar	24	57
9.	Trijukinarayan Jamnaprasad Mishra	26	59
10.	Ajitbhai Laljibhai Gameti	46	88
11.	Hitendrasinh Ganubha Jadeja	48	94
12.	Kedarnath Ramlal Avadhvasi (I.O.)	51	102

2.4.To prove the case against the accused, the prosecution also produced and relied upon the following documentary evidence, the details of which are mentioned in paragraph 4 of the impugned judgment and order which are as under:

Sr.N O.	Description	Ex. No.
1.	Panchnama	11
2.	Seal and slips signed by the panchas	13 & 14
3.	Copy of muddamal receipt	15
4.	Extract from station diary	18

Sr.N o.	Description	Ex. No.
5.	Extract from the diary maintained by control room	20 & 21
6.	Copy of information communicated to police control room, Rajkot	22
7.	Copy of a yadi whereby control room was informed about the departure for raid	23
8.	Certificate given by Gopalbhai	25
9.	Extracts from station diary	27, 28 & 29
10.	A letter whereby investigation was deputed	30
11.	A report by Police Sub Inspector to register the offence	35
12.	Complaint by Bakulbhai Vithalbhai Jani	36
13.	Letter to the Scientific Officer	37
14.	Copy of information given to Deputy Commissioner, Rajkot	38
15.	Copy of letter whereby Deputy Commissioner of Police, Rajkot was informed about the seizure of muddamal	39
16.	Information about the arrest of the accused	40
17.	Copy of letter whereby the accused was informed about his right to have search in presence of any gazetted officer	41
18.	Copy of seizure memo	42
19.	Copy of arrest memo	43
20.	Slips	44 & 45
21.	Report of Scientific Officer	47
22.	Yadi to FSL	52

Sr.N O.	Description	Ex. No.
23.	Copy of letter whereby Deputy Commissioner of Police was informed about raid	53
24.	Copy of letter whereby the accused was forwarded to the Judicial Magistrate, First Class	54
25.	Copy of report whereby police custody remand was sought	55
26.	Nil Panchnama	56
27.	Acknowledgment by FSL Junagadh	57
28.	Muddamal Yadi forwarded to FSL	58
29.	A letter by FSL	59
30.	FSL report	60
31.	Closing pursis by the prosecution	62
32.	A pursis by defence lawyer that they do not want to cross-examine any of the prosecution witnesses in view of the amended charge	61
33.	Learned advocate for the accused preferred to submit written argument	63

2.5. After recording of the evidence of the prosecution witnesses was over, the learned Judge of the trial Court explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement as required under Section 313 of the Code. In his further statement, the accused denied the case of the

prosecution in toto. He, however, did not lead any evidence nor did he examine any witness in support of his defence.

2.6. On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the prosecution, the learned Judge of the trial court held that the prosecution has proved its case beyond all reasonable doubts. According to the learned Judge of the trial Court, though independent witnesses like panchas have not supported the prosecution case, on appreciation of other evidence on record, the prosecution has succeeded in proving the complicity of the accused and, therefore, he found the accused guilty of the offence and recorded the order of conviction and sentence to which reference is made in earlier paragraph of this judgment, which has given rise to instant appeal at the instance of the accused.

3. Ms. R.V. Acharya, learned advocate appointed

by the Legal Aid Committee to assist the accused, has contended that the prosecution has examined the members of the raiding party who have not followed the mandatory and statutory provisions contained under the NDPS Act and, therefore, on account of non-compliance of the mandatory as well as statutory provisions of NDPS Act, the prosecution evidence cannot be relied upon and cannot be acted upon. It is also highlighted by her that the prosecution has not been able to successfully establish that the contraband article which was sent to FSL was not tampered with during the course of its journey from the stage of seizing and sealing of the muddamal brown sugar to the stage of its reaching the FSL. It is also emphatically submitted by her that independent witnesses i.e., panch witnesses, have not supported the prosecution case with regard to the recovery of the brown sugar, seizure and sealing of the same and, therefore, the contents of the panchnama are not proved and in that view of the matter the prosecution has

not been sable to prove the culpability of the accused for commission of the offence punishable under Section 21 of the NDPS Act. On the aforesaid premises, it is submitted by her that the impugned judgment and order deserves to be quashed and set aside by allowing this appeal and thereby acquitting the accused of the offence with which he was charged. She, therefore, urged to allow the appeal.

4. In counter submission, Mr. KT Dave, learned APP for respondent - State of Gujarat, has submitted that by voluminous evidence produced by the prosecution, the complicity of the accused is proved beyond reasonable doubt. The accused was found and caught red-handed with contraband article brown sugar in 12 pouches. It is also submitted by him that after following and observing mandatory and statutory provisions contained under the NDPS Act, the contraband article was seized and sealed in presence of the members of the raiding party as well as panchas.

FSL report in terms certified that the said contraband article which was sent for analysis was diacetyl morphine (heroin) morphine, codeine, thebaine and narcotine, popularly known as 'brown sugar'. It is also highlighted by him that the prosecution has successfully established that the sample was not tampered with during the course of the journey from the stage of filing of the complaint till it reached the FSL and in that connection the prosecution has examined a number of police officers from whose hands the contraband article was passed and reached to FSL. It is also pointed out by him that though the panchas have turned hostile and have not supported the prosecution case it does not weaken the case of the prosecution. He has submitted that it is not unknown to criminal jurisprudence about the panchas turning hostile and that now-a-days it is on increase. However, the case does not depend solely on the evidence of the panch witnesses. If the evidence of the members of the raiding party is of sterling quality then there

is no reason to discard their evidence and on the basis of the evidence of the members of the raiding party, order of conviction can be passed. On the aforesaid premises, according to him, the prosecution has established the case beyond reasonable doubt and, therefore, the learned Judge of the trial Court has rightly recorded the order of conviction and sentence. He further submitted that the impugned judgment and order does not warrant any interference of this court in this appeal and as the appeal lacks merit, it deserves to be dismissed. He, therefore, urged to dismiss the appeal.

5. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a compete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read an re-read by the learned advocates for the parties with reference to broad and

reasonable probabilities of the case. In light of the caution sounded by the Supreme court while dealing with NDPS cases, this court has examined the entire evidence on record for itself independently of the learned Judge of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the learned Judge of the trial Court has rightly recorded the order of conviction and sentence.

6. At the outset, be it noted that to combat illicit drug traffic and drug abuse, both at the national and international levels, the penal provisions contained under the NDPS Act are stringent and punishment thereunder is harsh, therefore, as per the settled principles of criminal jurisprudence, the Court of law must insist on the strict compliance of the safeguards provided under the statutory provisions contained thereunder.

7. In this connection, it would be appropriate to refer to the observations made by the Supreme Court in the case of Bharatbhai Bhagwanjibhai v. State of Gujarat, AIR 2003 SC 7. In para 1 of the said judgment, the Supreme Court has observed as under:

“The Statement of Objects and Reasons of the NDPS Act categorically records the inadequacy of the existing legislation to combat illicit drug traffic and drug abuse, both at the national and international levels and it is by reason of such deficiencies in the existing laws, the legislature thought it prudent to consolidate the same and bring about a comprehensive legislation so as to meet the exigencies of the situation. A plain look at the provisions of the NDPS Act read with the Statement of Objects and the Preamble would depict the intent of legislature as regards the offences under the said consolidated legislation, which stands

expressed in rather explicit language as one of the most heinous ones in nature. This Court, however, in consonance with criminal jurisprudence of the country has been insisting on strict compliance of the safeguards provided under the statute so as to be in tune therewith".

8. In view of the stringent penal provisions and harsh punishment provided thereunder and in view of the observations made by the Supreme Court in the above referred to judgment, we have to find out as to whether in instant case strict compliance of the safeguards provided under the statute have been observed by the Police Sub Inspector during the course of search of the accused and seizure of the muddamal, contraband article, brown sugar.

9. In this connection, we shall first refer to the testimony of P.W.1, Bakulbhai Vithalbhai Jani, the complainant, Ex.5, at page 22 of the

paper book. He has, inter alia, testified that on 10.4.1999, he got secret information that a person on white dress was selling brown sugar near Hotel Ramnath. The said secret information was reduced into writing. Thereafter he informed his higher officer about the receipt of secret information. He thereafter called panchas and Scientific Officer and prepared preliminary panchnama at the police station. Thereafter the raiding party proceeded to Ramnathpara and they found one person in white dress near Hotel Ramnath. He was searched in presence of two panchas and Scientific Officer and 300 milligrams of brown sugar was found from his pocket. In short, he has deposed as per the complaint lodged with DCB Police Station, Rajkot, Ex.36. According to this Court, the oral testimony of P.W.1 gets complete corroboration from the complaint Ex.36. There is no contradiction between the complaint Ex.36 and the oral testimony of P.W.1, Bakulbhai Jani, Ex.5. He has narrated about the strict compliance of the provisions of sections 42, 43, 50, 52 and 57 of the NDPS Act. It may be noted

that P.W.1, Bakulbhai Jani, was cross-examined by the learned advocate of the accused but he has successfully withstood the test of cross-examination and nothing substantial has been brought out during his cross-examination which would impeach his credibility.

10. The prosecution has thereafter examined P.W.4, Ganpatprasad Banarasiprasad, Ex.12, which is at page 42 of the paper book. He was working as Head Constable at DCB Police Station, Rajkot at the relevant time and he inter alia testified that he was called by P.W.9, Trijukinarayan Jamnaprasad Mishra, Ex.26, and entrusted two packets of muddamal on which seal of the Commissioner of Police, Rajkot was affixed.

11. The prosecution has thereafter examined P.W.5, Pravinchandra Chandulal Vyas, Ex.16, at page 49 of the paper book. He was a police constable at the relevant time with 'B' Division Police station, Rajkot City. He has testified that he was entrusted with the job of sending the

muddamal to FSL Junagadh. Therefore, he received the muddamal from P.W.6, Mahendra Dhanbahadur Pun, PS0, Ex.17, which he took to FSL Junagadh with forwarding letter and handed it over to FSL Junagadh in sealed condition.

12. The prosecution has thereafter examined P.W.6, Mahendra Dhanbahadur Pun, who was Head Constable at 'B' Division Police station, Rajkot City, Ex.17, at page 51 of the paper book. He has inter alia testified that he handed over the muddamal to P.W.5, Pravinchandra Chandulal Vyas, Ex.16 who was a police constable at 'B' Division Police station, Rajkot City for handing over the same to FSL Junagadh.

13. The prosecution has thereafter examined P.W.7, Jamnadas Mohanlal Vadgama, Ex.19, at page 53 of the paper book. He was Head Constable at Police Control Room, Rajkot at the relevant time. He has, inter alia, testified that on 10.4.1999 he was working as Control In charge of Police Control Room. At about 10.40 P.M. a written

report was submitted by Bakulbhai V. Jani with regard to secret information received by him. He recorded the said information in the station diary. He brought the original entry to the Court and produced a certified copy of the same which is at Ex.20. He has further testified that on the basis of the said written report, he recorded the entry with regard to Bakulbhai Vithalbhai Jani going for raid. A copy of the said report is at Ex.21.

14. The prosecution has thereafter examined P.W.8, Gopalbhai Kantilal Parmar, Ex.24, at page 57 of the paper book. He is a goldsmith. He has testified that on 10.4.1999 at about 8.30 P.M., Ajitbhai Laljibhai Gameti, a police constable, came to his house and called him with his weighing scale at Ramnathpara, near Ramnath Hotel and he weighed the muddamal which was of 300 milligrams. In his presence the said muddamal was sealed. He has issued certificate which is at Ex.22.

15. The prosecution has thereafter examined P.W.9, Trijukinarayan Jamnaprasad Mishra, Ex.26, at page 59 of the paper book. This witness is the person who registered the complaint Ex.36 as narrated by Bakulbhai Jani, PSI. He has testified that along with the complaint, Bakulbhai Jani also handed over the report. The accused was also produced before him. He has registered the complaint against the accused as narrated by Bakulbhai Jani. Thereafter the investigation was handed over to P.W.12, Kedarnath Ramlal Avadhvasi, Ex.51.

16. The prosecution has thereafter examined and relied upon the evidence of P.W.10, Ajitbhai Laljibhai Gameti, Ex.46, at page 88 of the paper book. He was a Scientific Officer of FSL, Junagadh at the relevant time. He has testified that at 7 P.M. on 10.4.1999 police came to his house with yadi. He has produced a copy of the yadi which is on record at Ex.37. On receipt of the yadi he went to DCB Police Station, Rajkot. Thereafter he accompanied PSI Jani for raid. He

has further testified that in his presence panchas were called by Bakulbhai Jani. Preliminary panchnama was prepared in his presence. Thereafter they went to the place as per the secret information received by Bakulbhai Jani where the accused was intercepted and caught hold along with muddamal brown sugar.

17. The prosecution has thereafter examined P.W.11, Hitendrasinh Ganubha Jadeja, Ex.48, at page 94 of the paper book. He was working as police constable at DCB Police station at the relevant time. He accompanied the complainant PSI Bakulbhai Jani for raid and in his presence all the formalities have been done and completed.

18. The prosecution has thereafter examined and relied upon the evidence of P.W.12, Kedarnath Ramlal Avadhvasi, Investigating officer, Ex.51, at page 102 of the paper book. He has testified that along with the complaint he received the panchnama, forwarding letter for sending the muddamal to FSL. He has testified that he has

forwarded the muddamal to FSL and a copy of the said forwarding letter is at Ex.52. He has further testified that he has informed ACP about the raid carried out by PSI Bakulbhai Jani and also the formalities completed by PSI Jani as well as by him. Office copy of the said letter is at Ex.53.

19. It may be noted that all these witnesses i.e., P.W. Nos. 4 to 12 have successfully withstood the test of cross-examination. Nothing substantial has been brought out from their evidence which would impeach their credibility. They have in unequivocal terms testified before the court as to what role they have played in the raid. They have also testified about the necessary and mandatory compliance of the provisions of sections 42, 43, 50, 52 and 57 of the NDPS Act.

20. So far as the statutory provisions contained under Section 42 (1) of the NDPS Act is concerned, it deals with power of entry, search,

seizure and arrest without warrant or authorization in a building, conveyance or enclosed place, between sunrise and sunset. So far as Section 42 (2) of the NDPS Act is concerned, it provides that where an officer takes down any information in writing under subsection (1) of section 42 of the NDPS Act or records grounds for his belief under the provisos thereto, he shall forthwith send a copy thereof to his immediate official superior.

20.1. Admittedly, the secret information received by P.W.1, Jani was reduced into writing and he informed about the said secret information to his immediate official superior.

20.2. Section 43 of the NDPS Act provides for Power of seizure and arrest in public places. The accused was intercepted and caught hold of at Ramnathpara, near Ramnath Hotel which is a public place and, therefore, in the instant case, admittedly Section 43 of the NDPS Act has to be invoked and not section 42 of the NDPS Act.

20.3. In the case of State of Punjab v. Balbirsingh, AIR 1994 SC 1872, the Supreme Court has observed that Section 43 which deals with the power of seizure and arrest in public places is slightly different from section 42 of the NDPS Act in certain respects. The empowered officer while acting under section 43, need not record any reasons of his belief. Section 43 also does not mention anything about the empowered officer having prior information given by any person or about recording the same, as compared to section 42. Similar view is expressed by this court in the case of State of Gujarat v. Abdul Rasid Ibrahim Mansuri, 1991 Drugs Cases 1 (Gujarat). In the said case the prosecution case was that the accused was found at public premises. At the same time, it was not the defence of the accused that he was at some place other than public premises. So legal position is clear that section 43 of the NDPS Act would be applicable to the facts of that case.

21. In view of the aforesaid clear elucidation as well as testimonies, in instant case, provisions of Section 43 would be applied as the raid was carried out at a public place. Notwithstanding the aforementioned legal position, the secret information received by P.W.1, Bakulbhai Jani was reduced into writing and it was immediately communicated to his official superior as can be reflected from the documentary evidence Ex.20 and 21. P.W.12, Kedarnath Ramlal Avadhvasi, Investigating Officer, Ex.51, page 102 of the paper book, has testified that he has also sent the said information to the Assistant Commissioner of Police. Office copy of the said information is produced on record at Ex.53. Therefore, the compliance of the mandatory provisions of Section 42 of the NDPS Act though not required, they have been fully complied with.

22. So far as the compliance of the mandatory provisions of Section 50 of the NDPS Act are concerned, the evidence is consistent. At the time of interception and raid, P.W.1, Bakulbhai

Jani, had informed the accused that if he so desired, he can be searched in presence of a gazetted officer or a magistrate or if he desired that he may be searched by Bakulbhai Jani, then he will search him and the option was left to the accused and the accused preferred the second option and volunteered to be searched by P.W.1, Bakulbhai Jani. Therefore, P.W.1, Bakulbhai Jani, in presence of the panchas and Scientific Officer searched the person of the accused and during the search he found contraband article from the pocket of the shirt of the accused. Similar is the evidence of other witnesses who were the members of the raiding party. Therefore, provisions of Section 50 of the NDPS Act have been complied with. The said aspect has been reflected in complaint Ex.36 at page 73 as well as panchnama at Ex.11. Besides this, all the witnesses have deposed accordingly. Therefore, mandatory provisions of Section 50 of the NDPS Act have been fully complied with.

23. So far as the journey of muddamal from the

stage of interception, search of the accused and seizure and sealing of brown sugar till it reached FSL Junagadh has also been duly proved by witnesses. The evidence of all the witnesses are consistent. As per the said evidence, the muddamal was not tampered with at any stage and it reached FSL Junagadh in sealed condition and intact. The procedures for sealing was done as per the practice adopted by the police in NDPS cases. FSL report Ex.60 clearly shows that the packets were sealed having one white paper wrapped by brown paper consisting 30 milligrams brown sugar. The second packet duly sealed was having 12 white papers. The FSL report also confirms that the muddamal was received intact by the FSL. The receipt issued by FSL, Ex.57, shows that both the parcels were sealed and were intact. FSL report Ex.60 shows that each packet was having one seal of Police Inspector, Rajkot City, one on one side and on the other side seal of Police Commissioner, Rajkot City was affixed. It is also evident from FSL report that the seals were in Gujarati language. This corroborates the

say of the police constable who handed over the muddamal to FSL Junagadh and Head Constable who made the entry in the station diary as to dispatch of muddamal to FSL Junagadh and handing over of the muddamal to FSL Junagadh. Therefore journey of the muddamal from the stage of seizure and sealing till its reaching at FSL Junagadh for analysis is fully proved and there was no chance of tamper with it in the said journey.

24. It is contended by Ms. Acharya, learned advocate of the accused, that PW 2, Ishwargiri Hemantgiri Gosai, Ex.9, at page 34 of the paper book and P.W.3, Govindbhai Amarshibhai, Ex.10, at page 36 of the paper book, who are panch witnesses and said to be independent witnesses, have not supported the prosecution case and, therefore, the prosecution has failed to prove the panchnama and hence the prosecution case cannot be believed. According to this Court, the aforesaid submission is absolutely feeble and has no substance and merit.

25. It is well settled by catena of decisions of the Supreme Court that merely because the panch witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown over-board as unreliable. It may be realized that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown and is ever on the increase. It needs hardly to be emphasized that the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision of the case were to depend solely on the testimony of panch witnesses regardless of the evidence of police officers, in theory, it would be giving a right to veto to the panchas so far as the question of culpability of an accused is concerned, which is not permissible in criminal jurisprudence. It is well settled that without good ground being pointed out, testimony of police officer, if otherwise found to be true and dependable, cannot be discarded by court on the ground that he is a police officer. on the facts and in the

circumstances of the case, this Court finds that the testimonies of P.W, 1 and 4 to 12 not only inspiring confidence but get corroboration from the other evidence on record and from the evidence of P.W.1, Bakulbhai Jani, the contents of panchnama are proved, which is on record at Ex.11.

26. On overall view of the matter, according to this Court, the mandatory and statutory provisions contained under sections 42 (1), 42 (2), 43, 50, 52 and 57 of the NDPS Act have been adhered to and complied with by P.W.1, Bakulbhai Vithalbhai Jani, PSI and it is duly proved by the evidence of the prosecution witnesses. P.W.1, Bakulbhai Jani, PSI had taken utmost care and caution while seizing and sealing the said contraband article. The apprehension of tampering with the muddamal can be ruled out as from the stage of recovery of the muddamal till its reaching the FSL, proper care and caution was taken by the police personnel. It is on the contrary clearly proved that it was in the safe

hands of police personnel and it reached at FSL intact in sealed condition for chemical analysis. Thus the complaint at Ex.36 and Panchnama at Ex.11 are duly proved.

27. In view of the aforesaid evidence, there is no manner of doubt that when the accused was intercepted, apprehended and searched, he was found in possession of contraband article brown sugar. Necessary formalities of search and seizure were complied with in presence of panchas and the statutory requirements and formalities contained under the NDPS Act were followed and the samples were sent to FSL after following the procedures under the NDPS Act.

28. On close scrutiny of the evidence on record, we find no infirmities in the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the trial court. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial

court, as according to us, no other conclusion is possible except the one reached by the trial court in the facts and circumstances of the case.

29. No new argument is advanced. No new criticism is offered. No infirmity in the reasoning of the trial court is pointed out. The evidence has been carefully analyzed and fully appreciated in the closely reasoned judgment with which we fully concur. We do not think it right to invest public time in reiterating the same reasoning in our language or giving the same answers to the same criticism in our own words for the sake of form.

30. In aforesaid view of the matter, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence. The sentence awarded to the accused is minimum and has to be maintained.

31. On the wake up of the aforesaid, we are not inclined to interfere with the judgment and order

of conviction and sentence recorded by the trial court and as the appeal lacks merit, deserves to be dismissed.

32. For the foregoing reasons, the appeal fails and accordingly it is dismissed.

(A.M. Kapadia, J.)

(K.A. Puj, J.)

(karan)